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CENTRAL COAST DISTRICT OFFICE
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Filed: February 15, 2000
Staff: DSL
Staff Report: April 18, 2000
Hearing Date: June 15, 2000
Commission Action:

CLAIM OF VESTED RIGHTS
STAFF REPORT AND RECOMMENDATION

CLAIM NO.: **3-99-048-VRC**

CLAIMANT: **CHARLES PRATT**, Owner
William Walter, Attorney

PROJECT LOCATION: South side of Rodman Drive, adjacent to Montana de Oro State Park, Los Osos, San Luis Obispo County

DEVELOPMENT CLAIMED: All off-site improvements (roads, utilities, drainage and erosion facilities) for Unit II of Tract 308 for 152 lots.

Recordation of Final Map for the 81 acre site that includes 152 lots ranging in size from 10,000 sq. ft. to 28,750 sq. ft.;

or as an alternative to the above;

The right to complete and record Tract 1873, a 124 acre site composed of Tract 308, Unit II and an additional, adjacent 43 acre parcel to be subdivided into 45 lots ranging in size from 20,000 sq.ft. to 73,740 sq.ft., 3 open space parcels totaling 88 acres, and including all subdivision improvements (roads, utilities and graded building pads).

FILE DOCUMENTS: Vested Right Claim VR-3-99048 which includes two volumes of written materials (approximately 1000 pages) and applicants exhibits 1 through 18 of oversize maps and plans, supplementary materials received December 15, 1999, Application 128-02 (Claim of Vested Right for Tract 308, Unit I, APN 74-022-31, 74-022-32, received May 13, 1977 , South Coast Regional Coastal Commission), Coastal Development Permit Application 125-34, Coastal Development Permit Application 4-86-48, Coastal Development Permit 4-87-337, San Luis Obispo County files for Tract 308, Tract 1342 and Tract 1873, Appeal 3-SLO-98-087, South Coast Regional Coastal Commission v. Charles Pratt Construction Company (1982) 128 Cal. App. 3d at 830, A-3-SLO-98-087 (Appeal of Tract 1873)

ACTION: Commission Hearing and Vote

STAFF RECOMMENDATION: Staff recommends that the Claim of Vested Rights for Tract 308, Unit II or Tract 1873 be rejected.

Motion No. 1 :

"*I move that the Commission determine that the Claim of Vested Rights for Tract 308, Unit II as described in 3-99-048-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution No. 1:

The Commission hereby determines that 3-99-048-VRC, Claim for Tract 308, Unit II, is not substantiated and adopts the Findings set forth below.

Motion No. 2:

"*I move that the Commission determine that the Claim of Vested Rights for Tract 1873 as described in 3-99-048-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution No. 2:

The Commission hereby determines that 3-99-048-VRC, Claim for Tract 1873, is not substantiated and adopts the Findings set forth below.

Summary of Recommendation

Charles Pratt has submitted a Claim of Vested Rights for the subdivision of a 81 acre parcel into152 residential lots ranging in size from 10,000 sq. ft. to 28,750 sq. ft. (Tract 308, Unit II, the completion of all road and utility improvements to serve the lots and the recordation of the final map. In the alternative, the Claimant proposes that the Commission acknowledge a Claim of Vested Rights for construction of all subdivision improvements and recordation of a Final Map for Tract 1873. Tract 1873 is a proposed 45 lot subdivision of all of the land included in Tract 308, Unit II plus an additional, adjacent 43 acres. The sites for both Tract 308, Unit II and Tract 1873 are located on a hillside on the south side of Rodman Avenue next to Montana de Oro State Park in the Los Osos area of San Luis Obispo County. (Please see Exhibit 1, Location Map)

Mr. Pratt's claim regarding Tract 308, Unit II is based on his assertions that, prior to January 1, 1977, the effective date of Coastal Commission jurisdiction over the site, he had valid county approvals for the work needed to satisfy the conditions attached to the Tentative Map in order to file the Final Map for the subdivision and had completed substantial work on subdivision improvements in reliance on the county permits. He further asserts that he is entitled to a Claim of Vested Right for Unit II of Tract 308 because a published appellate court decision which granted a partial vested right for the completion of subdivision improvements for Unit I of Tract 308 (South Central Coast Regional Coastal Commission v. Charles Pratt Construction Company, (1982) 128 Cal.

App. 3d at 830) is also applicable to Unit II. Finally, he asserts that a portion of the cost of work exempted for subdivision improvements for Unit I in 1977 should be allocated to Unit II because some of the improvements would also serve Unit II.

Mr. Pratt's claim regarding Tract 1873 is based the fact that part of Tract 1873 was once Unit II of Tract 308 and on dicta found in the Pratt case referenced above that the claimant asserts commits the Commission " to complete the subdivision provided it comports with the land density requirements of the Coastal Act " (Pratt infra at 848). Tract 1873 was approved by the County of San Luis Obispo in 1997 and is the subject of an appeal to the Commission (A-3- SLO- 98-087) which is scheduled for hearing on the same agenda as this Claim of Vested Right.

In support of his claim, Mr. Pratt has submitted two volumes of written material, numerous oversize maps and plans and the Pratt case cited above. A supplemental packet of material was received in December 1999 in response to a staff request for more specific information regarding the exact development claimed and supporting documentation. (Please see Exhibit 2, portion of submittal and staff letter)

Staff has reviewed the submittal as well as the files for the Vested Right Claim for Unit I Tract 308, CDP Applications 125-34, 4-86-48, 4-87-337, the appeal of Tract 1873 and the San Luis Obispo County Files for Tracts 308, 1342 and 1873. This analysis is detailed in the following Findings and concludes that neither the claim for Tract 308, Unit I nor that for Tract 1873 should be acknowledged because of the following reasons:

1. The Claimant did not have all valid local approvals for Tract 308 prior to January 1, 1977. He had only conceptual approval of a Tentative Map and approval of a preliminary grading plan. There are currently no valid approvals for this project as shown on the following chart.

Tract 308, Unit II Local Approval Needed	**For site work**	**For Final Map**	**Date Approved**	**Date Extended**	**Date Expired**
Preliminary Grading Plan	X	X	8/6/1976	exercised	N/A
Tentative Map (TM) for Tract 308, Unit II	X	X	5/7/1973	10/1/1974 for 2 years, 9/28/1976 for18months	3/28/1978
TM Condition 1; Revised Map to show 8 acres Open Space or fewer lots		X	NO	N/A	N/A
TM Condition 2: Final "Improvement Plan "	X	X	NO	N/A	N/A
TM Condition 3: Drainage Plan	X	X	NO	N/A	N/A
TM Condition 4: Water System Plans and proof of water supply	X	X	NO	N/A	N/A
TM Condition 5: Sewer System, RWQCB sign off		X	NO	N/A	N/A
TM Condition 6: Utilities plan and easements	X	X	NO	N/A	N/A
TM Condition7: Final Grading Plan	X	X	NO	N/A	N/A
TM Condition 10: Revised Map showing open space lots, legal documents establishing Homeowners Association		X	NO	N/A	N/A
TM Condition 11: Fire Protection Plan		X	NO	N/A	N/A
TM Condition 12: Revised street names		X	NO	N/A	N/A
TM Condition14: Revised map showing max. building heights for each lot		X	NO	N/A	N/A

2. The Claimant did not perform substantial work in reliance on and pursuant to all necessary and valid local permits prior to January 1, 1977. The work that was done prior to 1977 was limited to rough grading for the purpose of establishing a survey for preparing a final grading and improvement plan that would be subject to county review and was undertaken pursuant to a *preliminary* grading plan approved by the County in August of 1976. The money expended for this rough grading and vegetation clearing was minimal in relation to total cost of project. Money spent on improvements for nearby subdivisions constructed under separate and much earlier approvals may not be counted towards the cost of completing Tract 308, Unit II improvements.

3. The local approval for the Tentative Map for Tract 308, Unit II has long expired because the Claimant failed to satisfy the conditions needed to file the Final Map. Any vested right obtained under that approval has lapsed due to the expiration of the underlying permit without recordation of the final subdivision map.

4. The Claimant has abandoned Tract 308, Unit II in favor of a new project on the same site, Tract 1342. A condition attached to the approval of Tract 1342 required that four acres of the former Unit II of Tract 308 be dedicated for open space to mitigate impacts on other portions of Tract 1342. This acreage deletes 10 lots in Tract 308, Unit II.

5. The claim for the exemption of Tract 1873 cannot be acknowledged because it was approved by San Luis Obispo County in 1997, over twenty years after the site came under the jurisdiction of the Coastal Commission.

6. The Claimant applied for and obtained) a permit for Tract 1873 before making the vested right claim. A 1976 published Appellate Court decision holds that a claim of vested right may not be asserted if the claimant has already applied for a permit for the project. (Davis v. Central Coastal Zone Conservation Commission (1976) 57 Cal App. 3d. 700) Under this ruling, the claimant thus relinquished a right to assert a claim of vested right for Tract 1873.

7. The dicta cited in the 1982 Pratt case regarding the vested right claim for Unit I of Tract 308 does not apply to either Tract 308 Unit II nor does it require the Commission to approve Tract 1873 if it meets the " land use density requirements of the Coastal Act ". According to statute, projects approved prior to the certification of a Local Coastal Program must be found consistent not only with density requirements but also with *all* applicable resource protection policies of Chapter Three of the Coastal Act (PRC 30604 (a)). After certification of an LCP, the statute requires that the projects be consistent with the provisions of the relevant LCP (PRC 30604 (b) and (c) as applicable).

Findings and Declarations

1. Legal Authority and Standard of Review

Section 30608 of the Coastal Act provides that no person who has obtained a vested right in a development prior to January 1, 1977 shall be required to secure a Coastal Development Permit (CDP) for that development. The procedural framework for Commission consideration of vested rights claims is found in Sections 13200 through 13208 of the Commission's Administrative Regulations (California Code of Regulations, Title 14 et seq.) These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development or development activity, then the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any changes to the exempted development after January 1, 1977 would require a CDP. If the Commission finds that the claimant does *not* have a vested right for the particular development, then a CDP must be secured before the project can go forward.

Mr. Pratt has applied for an exemption from the CDP requirements of the Coastal Act contending that he has a vested right to complete the improvements and record the Final Map for the 152 lot subdivision of Tract 308, Unit II because the project was "vested" prior to the establishment, on January 1, 1977, of the Commission's regulatory jurisdiction in this area of San Luis Obispo County. The Commission must apply certain legal criteria to determine whether a claimant has vested rights for a specific development. These criteria are based on case law interpreting the Coastal Act's vested right provision as well as common law vested rights claims. The standard of review for determining the validity of a Claim of Vested Right is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the claimed development prior to January 1, 1977. Typically this would be a building permit, grading permit, Final Map, health department permit for a well or septic system etc. or evidence that no permit was required for the claimed work. (Billings v. California Coastal Commission (1988) 103 Cal. App. 3d at 729)

2. If work was not completed as of January 1, 1977, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization prior to January 1, 1977. (Tosh v. California Coastal Commission (1979) 99 Cal. App. 3d at 388 (Avco Community Developers Inc. v. South Coast Regional Commission (1976) 17 Cal. App. 3d at 785)

In order to acknowledge a claim of vested right for a specific development or development activity, the commission must find that the claimant met all applicable

permit requirements for the project and, at a minimum, performed substantial work and/or incurred substantial liabilities in good faith reliance on all applicable permits and other approvals for the project, prior to January 1, 1977. In this case the Claimant is asking that he be allowed to finish all improvement work on the subdivision and file the Final Map. He must therefore demonstrate that he has fulfilled the conditions attached to the Tentative Map and has secured all approvals necessary to carry out the work needed to construct the subdivision improvements. In addition, and particularly relevant to this claim, the local approvals must still be valid so as to allow the completion of the development. McPherson et al v. City of Manhattan Beach (2000) 78 Cal Ap 4th 1252, 1257) The burden of proof is on the claimant to substantiate the claim. (California Code of Regulations, Title 14, Section 13200)

There is also legal authority that suggests that there are two additional, applicable criteria that should be considered in determining whether a particular claim for an assertion of a vested right to complete a development can be acknowledged. The first is the holding that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (Urban Renewal Agency v. California Coastal Zone Conservation Commission (1975) 15 Ca. 3d at 577). In this case, it is not necessary for the Commission to decide the issue of whether Mr. Pratt has standing in light of the cited case because he owned the property in 1976.

The other factor to consider is whether in making an application for a Coastal Development Permit, the claimant relinquishes any right to make a subsequent vested right Claim for the same project. Davis v. Central Coast Regional Coastal Commission (1976) 57 Cal. App. 3d at 700). In Davis, the applicant, after being denied a permit by the Commission, argued during the trial and subsequent appeal challenging that denial, that he had a fundamental vested right to develop his property. The Court of Appeal held that Davis should have applied to the Commission for a vested rights determination and could not now, when dissatisfied with the Commission's permit decision, apply for an exemption from the Coastal development Permit requirement. The Davis case *is* relevant to the Commission's determination because the facts are quite similar to those associated with the claim for Tract 1873. Mr. Pratt sought (and obtained) a CDP from San Luis Obispo County for Tract 1873 in 1997. In the current Vested Right Claim submittal, received in the Central Coast Office in January of 1999, he has asked that the Commission acknowledge a vested right for this tract.

The following vested right analysis is based on information submitted with the application and supplemental Commission staff research of official Commission and County records.

2. Development Claimed As Exempt From Coastal Act Permit Requirements

The claimant, Mr. Pratt, has submitted a Vested Right Claim Application for Tract 308, Unit II, 152 lot subdivision of a 81 acre parcel in the Los Osos area of San Luis Obispo County. The application proposes that the Commission exempt the recordation of the Final Map for Tract 308, Unit II and the completion of all subdivision improvements which the Claimant describes as follows:

a. Continuation of utilities from existing stubs.

b. Construction and continuation of street paving, curbs and gutters

c. Completion of storm drain system per plan

(from Claimant's submittal, Expanded Answer to 9, Claimant's Exhibit 8 M)

The Claimant may be underestimating the amount of work still to be accomplished on this site. Based on information found in County Records, a review of proposed improvement plans and a recent inspection of the site, it appears that no significant work has been done and all of the subdivision improvements (installation of all utilities, drainage and erosion provisions and all paving of roads) remain to be accomplished. It also appears that the limited grading and clearing done in 1976 is now completely overgrown and the visible graded areas are no more than paths at this point. The widest graded "road" is perhaps 10' with most only a few feet wide. It is obvious from the site inspection that the substantial additional grading for the entire road system must be done before any paving or other finish work could be undertaken.

In the alternative, the Claimant has requested that the Commission acknowledge a Claim of Vested Right for Tract 1873. This acknowledgment would exempt the recordation of the Final Map for the subdivision of a 124 acre site into 45 lots and the construction of all subdivision improvements.

3. History of the Claim

In order to adequately consider the claimants assertions it is necessary to understand the history of Tract 308, Unit I and Unit II, Tract 1342, Tract 1873 and the factual details of the Vested Right Claim for Tract 308, Unit I, the subsequent Appellate Court ruling on this claim, the Commission action to approve a 40 lot subdivision and remainder parcel for Tract 1342, formerly Tract 308, Unit I and II in 1988, and the County action to

approve Tracts 1342 and 1873. This history is discussed in the following paragraphs. A chart summarizing relevant information is also included.

Tract Number	Project Description	SLO/CCC Action	Map Extend	Final Map	Map Expired
308, Unit I	86 lots on 26 acres	SLO: Tentative Map,5/7/1973 Approved, CCC: VRC128-2 partly Denied, CDP 125-34 , Denied CCC decision on VRC upheld by Court 2/1982	SLO :10/1/1974, and 9/28/76 Superior Court: 34 mos. After decision	NO	May 1985
308, Unit II	152 lots on 81 acres	SLO: Tentative Map, 5/7/1973 Approved	SLO: 10/1/1974 and 9/28/76	NO	March 28, 1978
1342	40 lots on 26 acres, 81 acre remainder parcel (Old Tract 308, Units I and II)	SLO: Tentative Map 12/1/1985 Approved CCC: CDP 4-86-48, 8/13/86 Denied, CDP 4-87-337, 5/7/88 Approved	?	Sept. 7, 1989	N/A
1873	45 lots on 124 acres (Old Tract 308, Unit II plus two additional parcels)	SLO: Tentative Map, 9/1/1998, Approved CCC: Appeal Pending	N/A	NO	NO

The Common History of Units I and II of Tract 308: The Subdivision Review Board (SRB) of San Luis Obispo County prepared a staff report for Tract 380 dated February 21, 1973. The project was described as an expansion of the existing Cabrillo Estates south of Los Osos and was for 235 residential lots on 107.7 acres with two open space parcels totaling 22.4 acres. (Please see Exhibit 1) The Tentative Map for Tract 308, was recommended for *conceptual* approval by the Subdivision Review Board in their recommendation to the Planning Commission dated March 6, 1973. (Please See Exhibit 3) The Subdivision Review Board recommended " *that the Planning Commission approve the Tentative Map in concept only in regard to the number of lots, lot layout and street configuration, subject to further review of said items upon submission of a grading plan and erosion control plan."* The SRB recommendation went on to include a number of conditions and appears to contemplate revisions of the map based on proposed mitigations. This report does not describe the size or location

of the lots but proposed Condition 11 requires the applicant to consult with the State Department of Parks and Recreation *" regarding fire control along the south boundary of the property".* It can be inferred from this condition that this action included what is now known as Unit II of Tract 308.

On April 24, 1973, the San Luis Obispo County Planning Commission considered the report of the Subdivision Review Board on Tract 308 and recommended to the Board of Supervisors that the Tentative Map be approved subject to the Board's adoption of the Environmental Impact Statement and the Subdivision Review Board recommendations of March 6, 1973 with some exceptions not relevant to these findings. The Planning Commission recommendation for conceptual approval does not contain any specific description of the project. Again however it can be inferred that Unit II was part of the approval because of the SRB condition relevant to coordination with the State Department of Parks and Recreation.

On May 7, 1973, the Board of Supervisors approved the Tentative Map for Tract 308 with conditions as submitted by the Subdivision Review Board as stated in the Planning Commission's letter of April 24, 1973 to the Board. The description provided by the Board Resolution is vague and does not indicate the size, location or number of lots approved by their action. From the exceptions granted to the subdivider for development adjacent to Montana de Oro State Park it can, however, be implied that the subdivision included land in what is now identified as Unit I and Unit II of Tract 308.

It thus appears that as of May 7, 1973, the applicant had a *conceptual* approval for a 235 lot subdivision on 107.7 acres of land subject to a number of conditions, some of which had the potential to change the number and configuration of the lots. Staff notes that the Subdivision Map Act does not provide for conceptual approvals of Tentative Maps so the legal status of the County's 1973 action on Tract 380 remains unclear. In any event, because this was not the last discretionary approval, no claim of vested rights can be based upon any of the County approvals up to this point in time.

On October 1, 1974, the Board of Supervisors approved a two year extension of the 1973 approval of Tract 308 until November 1, 1976. It is not revealed in the brief note of this action why an extension was requested or if any progress had been made on meeting the numerous conditions attached to the 1973 approval. In a supplemental attachment to the Vested Right Claim for Unit I, the applicant states that the Board of Supervisors, on September 28, 1976 approved an alternative sewage treatment system for Tract 308 and also renewed the time running on the Tentative Map for an additional one and a half years. (See also Claim of Exemption 128-2,report prepared by the Office of the Attorney General dated July 19, 1977, Exhibit 4).

It is at this point in the past that the history of Units I and II diverge. Unit I becomes the subject of a 1977 Vested Rights Claim and a 1977 CDP application (125-34) which was denied. (Please see Ex. 5, VRC Application) Tract 308, Unit II expired in March of 1978 based on the 18 month extension granted to the applicant by the County in September 1976. Tract 308, Unit I expired in May of 1985 by the terms set out in the litigation over the vested right claim relevant to Unit I. On January 26, 1986, the County approved a tentative Map for Tract 1342 which was co-terminus with the area of expired Tract 308 Unit I and Unit II. Tract 1342 proposed a 40 lot subdivision of old Tract 308, Unit I with Unit II shown as a remainder parcel. (Please see Ex. 1, location maps and site plans). A condition attached to the approval of this subdivision required that approximately four acres in the south-west corner of the remainder parcel was to be placed in an open space easement as mitigation for impacts on habitat which would occur as a result of the forty lot subdivision. This subdivision was approved by the Coastal Commission in 1988 (4-88-337). In 1997, the County approved a Tentative Map for Tract 1873. Tract 1873 includes all of the remainder parcel from Tract 1342 (Old Tract 308, Unit II) and an additional 26 acres to the south-east. This Tract Map was appealed to and by the Commission; the de novo recommendation for denial is before the Commission as A-3-SLO-98-087.

The applicant for the current Vested Right Claim asserts that the Court decision relevant to Unit I of Tract 308 also conferred a vested right on Unit II. The following paragraphs detail the history of the Vested Right Claim (VR 128-2) and conclude that this claim was made only for Unit I and does not confer any exemptions on Tract 308, Unit II.

Vested Right Claim 128-2 for Unit I of Tract 308

Project Description: On May 13, 1977, Charles Pratt Construction Company submitted a Claim of Vested Right for "recordation of final map and completing off site improvements for Tract 308 of Cabrillo estates for 86 single family homes" (Tentative Claim of Exemption Form, item 3 , Please see Exhibit 7). Item 13 on this form used by the Commission to process Vested Rights Claims asks if the development is planned as a series of phases or segments. The applicant responds that "*no, tract completed in one phase*". Unit II is not mentioned as a possible future phase of the project presented for the 1977 Vested Right determination.

Further evidence to support the notion that the 1977 VRC was for Unit I only is found in the exhibits attached to the claim form. Attachment 1 shows the site as being approximately 25 acres in size and bisected by Rodman Drive. Attachment 2 lists the local governmental approvals and expenditures to date for Unit I only. Please see Exhibit 5. In a letter written by the applicants representative included as part of the claim, the representative notes *"while Cabrillo Estates as a total project may abut Montana de Oro State Park, this specific proposal is internal to the project and has no*

common boundary with the park ". (Andrew Merriam, AIA, letter to Joan Valdez of the South Central Coast Regional Commission, dated May 11, 1977) In a letter of April 18, 1977 to the Commission, Mr. Merriam makes a distinction between Unit I and II by describing Unit I as under construction and Unit II as "designed", with the implication that it is *not* under construction. The Assessor parcel numbers given by the applicant refer only to parcels located within the 25 acre area of Unit I shown on the site map referred to earlier.

The July 19, 1977 staff report prepared by Peter Kaufmann of the Office of the Attorney General for this claim describes the project as the " *subdivision of Tract 308, Cabrillo Estates, into 86 individual lots suitable for the construction of single family residences"* and analyzes only the expenditures for work done on Unit I. (Please see Exhibit 4). A staff report prepared by Commission Staff for the appeal of the South Central Regional Commission action on the claim states that the requested exemption is for " *subdivision into 86 lots, completion of subdivision improvements and drilling one water well* ". (Page 1, Appeal Summary dated 9/21/77) The subdivision improvements are described as follows in the appeal summary and clearly apply only to those needed to serve the proposed 86 lots: *" The off-site improvements generally consist of grading, the construction and paving of streets, the construction of driveways, the construction of curbs and gutters, and the placement of utility facilities and sewage disposal facilities all for the creation of 86 single family residence lots (* emphasis added). There is thus no support in the 1977 Claim and subsequent analysis for the Claimant's current contention that some of these improvements for Unit I were also to serve Unit II.

Finally, the various courts that reviewed the litigation surrounding the Commission's action on VR128-2 have described the site as being consistent with the characteristics of Unit I only. In his April 21, 1980 decision, Judge Richard Kirkpatrick of the San Luis Obispo Superior Court describes the project as

> " *real property located in San Luis Obispo, California known as Tract 308 consisting of approximately 25 acres located in the Cabrillo Heights development in the Baywood Park area of the un-incorporated portion of San Luis Obispo County."* (lines 7-10, page 2, Findings of Fact and Conclusions of Law, dated April 21, 1980)

The Judge also described the project as follows; " *such map Tract 308 divided the property into 86 lots* " (Lines 23 and 24, page 2 infra).

Although the Appellate Court did not completely agree with the decision of the San Luis Obispo Superior Court, it did agree with the description of the project claimed for exemption. The project is described by the Appellate Court as

> *" Pratt owns 25 acres of real property in San Luis Obispo County described as Tract 308 …."* and *" On May 4, 1973, the San Luis Obispo County Board of Supervisors approved a tentative map for tract 308 which delineated the property into 86 residential lots. The tentative map was subject to certain conditions relating to street grading, paving, driveways, gutters. Water, utility extensions, water and sewer lines and extensions, all of which are known as " off site Improvements"* ". (South Central Coast Regional Commission v. Charles A. Pratt Construction Company, 128 Cal. App. 3d at 835)

In conclusion, it is abundantly clear that only Unit I of the original Tract 308 fits the description of the project claimed by the applicant in their 1977 submittal of a Vested Right claim to the Commission. This project was the only one analyzed by Deputy Attorney General Kaufmann in his recommendation to the Regional Coastal Commission, by planning staff in the appeal of the Regional Commission action to the State Coastal Commission and identified as the project by both courts with jurisdiction over the litigation on this claim. The Commission notes that this is also the County's position as evidenced by a recent letter to the claimant from the County Counsel's Office (please see Ex. 6). Unit II was not part of this VRC and thus cannot receive any entitlements to construct improvements or file a Final Map based on the outcome of the claim for Unit I.

Final Disposition of Vested Right Claim 128-2 for Unit I of Tract 308
Commission Action:

The Vested Right Claim for Unit I of Tract 308 was heard by the South Coast Regional Commission on August 12, 1977. The Applicant had requested an exemption to allow him to file the Final Map for the 86 lot subdivision, complete all subdivision improvements and to drill a water well. Staff recommended that only the subdivision improvements be granted an exemption because the claimant;

> *"has spent $46,894.25 which represents 22.8% of the total cost of the total {subdivision improvement} cost of $205,400 . This represents a substantial liability. Further there are no grounds for finding this to have been done with "unseemly haste."*

The work accomplished on the site was undertaken pursuant to an "Improvement Plan " for the subdivision improvements (road paving, installation of utilities etc.) approved by the county. This "Improvement Plan", based on a review of County records, was for Unit I *only*. The Regional Commission concurred with the Staff Recommendation and acknowledged the claim for the improvements but denied the claims for the water well and the Final Map. The Applicant appealed the Regional Commission action to the

State Coastal Commission on August 23, 1977. In September of 1977, the State Commission declined to hear the appeal and thus, the Regional Commission decision became final.

Litigation: Unsatisfied with the Commission's action on the Vested Right Claim, Mr. Pratt filed suit against the Commission in the San Luis Obispo Superior Court. On April 21, 1980, the Court ruled in favor of Mr. Pratt on all points and the judgment was filed on May 2, 1980. (Please see Exhibit 9, SLO Superior Court decision) As part of the decision, the Court extended the life of the tentative map by stating that *" The time for expiration of the tentative map for Tract 308, Cabrillo Estates, San Luis Obispo County, California shall be extended and the tentative map shall be valid for a period of thirty eight (38) calendar months following the entry of final judgment of this litigation*. *"* Given that the only focus of this litigation was on Unit I of Tract 308, it is reasonable to assume that the extension of the Tract approval was for Unit I and did not extend time on the approval for Unit II.

The Superior Court decision was appealed by the Coastal Commission. In February 1982, the Fifth Appellate Court handed down what became the final decision upholding the Commission's action on the Vested Right Claim for Unit I of Tract 308. (Please see Exhibit 6) At that point the thirty eight month time period provided by the Superior Court began to run. The Tentative Map of Unit I would expire in May of 1985.

County and Coastal Commission Permit History

CDP Application 125-34, 1977 for Tract 308, Unit I: After the Vested Right Claim for Tract 308 Unit I was only partially acknowledged by the Commission in 1977, Mr. Pratt applied for a Coastal Development Permit for the project. (Application 125-34) The staff report describes the proposed project as an 86 lot subdivision on a 25 acre parcel bisected by Rodman Drive. Maps attached as exhibits to the staff report show the same area considered in the Vested Right Claim. Unit II of Tract 308 is not a part of the proposed project. On September 30, 1977, the South Coast Regional Commission denied the project largely because it did not meet the Coastal Act criteria for rural land divisions. The Regional Commission's decision was appealed to the State Coastal Commission which upheld the denial.

CDP Application 4-86-48, (1986) for Tract 1342 : In 1984, Mr. Pratt applied to the county for a revised tentative tract map based on a lower density for the proposed subdivision. This new project boundaries were co-terminus with those of old Tract 308, Units I and II and proposed the division of the 25 acre parcel bisected by Rodman Drive into 40 lots (site of Tract 308 Unit I) and a remainder parcel of 81 acres (site of Tract 308, Unit II). The time required for County review of the proposal exceeded the life of

Unit I of Tract 308, which was to expire in May of 1985. As mentioned previously, Unit II had already expired in March of 1978. With expiration of the tentative map for Tract 308, Units I and II, a new tract number was assigned to the project (Tract 1342) and it was processed by the County as a new application. The County allowed the EIR for Tract 308 to be used for CEQA purposes, but required an extensive update and supplemental information regarding traffic and habitat values. The County approved the new proposal on December 1, 1985. A condition attached to the Tentative Map approval required that four acres in the south west corner of the 81 acre remainder parcel be set aside in an open space easement to mitigate impacts of the project on pygmy oak and Morro Manzanita habitat caused by the 40 lot subdivision. (Please see Exhibit 1, location maps and site plans)

In February of 1986, the Applicant submitted an application for Tract 1342 to the Coastal Commission for review. (CDP 4-86-48). The project was denied by the Commission on August 13, 1986 because of impacts on habitat and lack of adequate public services. A subsequent request for reconsideration (A-4-86-48-R) was also denied.

CDP Application 4-87-337 (1988) for Tract 1342 : On November 23, 1987, Mr. Pratt again filed an application for a Coastal Permit for Tract 1342 with the Commission. The project is described in the Commission staff report as:

> *"The proposed project is : (1) to divide 107 acres into into 40 residential lots of 20,000 square feet minimum (on a 26 acre portion of the site, a holding basin lot of approximately two acres, and one parcel of 81 acres; and (2) grading and construction of street and utility improvements for the 40 residential lots."*

Exhibits attached to the staff report show the parcel bisected by Rodman Drive and formerly Tract 308, Unit I as the site for the 40 lots. The site of former Tract 308, Unit II is shown as the 81 acre remainder parcel.

The initial staff recommendation prepared for the project was for denial. The application was heard by the Commission on June 7, 1988 and, by a 6-5 vote was approved. Revised Findings reflecting the Commissions action were prepared and adopted subsequent to the June approval of the subdivision. The Final Map was recorded on September 7, 1989.

Appeal A-3-SLO- 98-087 (1998) for Tract 1873 : On February 13,1990, Mr. Pratt submitted an application for the subdivision of a 124 acre site into 45 parcels including 41 residential lots ranging in size from 20,000 square feet to 4.6 acres, four open space

lots totaling 78.8 acres and approximately 6. 4 acres for street improvements. Of the one hundred twenty four acres that made up the site, eighty one consist of the remainder parcel for Tract 1342 discussed above. (old Tract 308, Unit II) Two parcels immediately to the east of the site of former Tract 308, Unit II totaling 43 acres were added to make up the new site now known as Tract 1873. The County filed the application on July 10, 1990.

A Draft EIR was prepared for the project in 1995 and the Final EIR was certified in 1996. (Cabrillo Associates Tract 1873, Final Supplemental EIR, prepared by the Morro Group, July 1996) This EIR offers some insights into the status of Tract 308, Unit II and rough grading on the site in 1976 that forms one of the bases for the current Vested Right Claim. In their response to comments from Central Coast Engineering (September 25, 1995) the Certified EIR states as follows:

> *The record should be made clear regarding the previous Tentative Tract 308 . Historical files indicate that the area encompassing the current request (Tract 1873) was also considered as Unit II of Tract 308. Although approved at the tentative stage, neither Unit I of Tract 308 or Unit II of Tract 308 ever recorded. As the Coastal Act was considered by the legislature, pending subdivisions in the coastal zone were required to be consistent with the Coastal Act. Unit I of Tract 308 was litigated and eventually the applicant prevailed in the courts. Unit II of Tract 308 was later reprocessed as Tract 1342 and was eventually recorded. It does not appear that Unit II was part of the settlement of this case.*

The County in adopting the Certified EIR also found:

> ***There are substantial differences between Unit I and Unit II of Tract 308. Unit I has approved tract (road) improvement plans on record with the County Engineering Department and Tract 308 Unit II (now Tract 1843) does not..***
>
> *Unit II of Tract 308 has no approved improvement plans on file with the County Engineer. Although the applicant's engineer maintains that " grading " was approved for the roads proposed in Tentative Tract 308, Unit II, no evidence has been found that any authorization to construct roads ever occurred. Therefore, it appears that any grading that occurred, rather than implying some sort of " vested right ", is, in fact unauthorized grading.[1] Although the proposed but unimproved roads involved vegetation clearance, the extent of cut and fill was limited. It should be*

[1] As discussed below, a permit for "preliminary" grading of the site was obtained in August of 1976.

noted that the width of the cleared areas are relatively narrow and do not approach the width of public roads.

Planning staff has been advised that there is no " vested right " to build roads proposed by Tentative Tract 308, Unit II since it long ago expired, no improvement plans were ever approved by County Engineering and any actual work done was unauthorized. (Final EIR, page X-34)

The information cited above from the EIR should be clarified regarding the status of permits for grading work undertaken on the site in 1976 and on which this claim for an exemption from the Coastal Development requirement is based. The Claimant did receive approval of a Tentative Map for Tract 308 Unit II on May 7, 1973. This approval contained the following condition:

2… " approve the Tentative Map in concept only in regard to the number of lots, lot layout and street configuration, subject to further review of said items upon submission of a grading plan and erosion control plan. Said plan is to be to a scale of 1" + 50' and contain the following information:

(a) All cuts and fills necessary to complete said subdivision
(b) All lot grading
(c) Proposed driveway provisions for lots south of South Bay Blvd. (Staff Note: Unit II is south of South Bay Blvd.)
(d) Disruption of natural terrain outside road right of ways necessary to provide utilities.
(e) Natural vegetation to be removed and remain. Notation shall be made of all trees proposed for removal
(f) All proposed measures to reduce erosion, including designation of all plant species and temporary erosion control methods during construction. Note : The applicant shall consult with the Soil Conservation Service in preparation of the erosion control plan and a copy of the completed plan shall be submitted to the Soil Conservation Service for review.

Further, said plans are to be submitted to the Planning Department at which time an evaluation based on the information shown on said plans as to lot lay out, lot number, erosion control and street configuration will be made by the Department and transmitted to the applicant. ***If there are disagreements that result in unresolvable problems, the matter will be submitted to the Planning Commission for final action.*** *(emphasis added.)*

> *Note: These requirements will give the applicant a chance to show that his mitigation measures will eliminate or lessen the impact on environmental concerns. Also, if lots are eliminated, the open space requirement may also be reduced accordingly.*

This condition clearly requires the applicant to take some intermediate steps before the County will approve a *final* grading and "Improvement Plan" for the subdivision. It is also clear that the final street configurations and number of lots may be different from that conceptually approved by the Board of Supervisors in May of 1973. Since the site of Unit II of Tract 308 was steep and heavily vegetated, a survey would be required to provide the field data needed to prepare the plan called for in condition 2. In order to accurately survey this site, clearing and rough grading would have to be done. A permit for this "preliminary" grading was approved by the County in August of 1976. The plans signed off by the County Planning Department at that time state *"for general conformance with the P. C. concept approval".* The sign off by the County Engineer is even more specific, stating, "*for preliminary grading required by Tentative Map Condition".*

The distinction between the approval for this preliminary clearing to allow for a survey and an approval for " Improvement Plans " is important to the analysis of this claim. Discussions with County Engineering staff reveal that a preliminary grading plan does not authorize the final grading and paving of roads, or the installation of utilities and drainage facilities. This type of work is (and was, in 1976 as well) authorized by an "Improvement Plan". There is no record at the County Engineer's Office of an "Improvement Plan" being authorized for Unit II. In contrast, an "Improvement Plan" *is* on file for Unit I of Tract 308 and it was on this local approval that the actual street improvements which provided the basis for the vested right for that project was founded. Thus the statement in the EIR is correct in that there was no valid local approval to actually undertake the work of finish grading and paving the roads and driveways or installing the utilities and drainage facilities on Tract 308, Unit II. The EIR is incorrect however in stating that *no* permits whatsoever were issued. The Claimant has shown that he did have local approval to clear and rough grade in order to properly survey the site consistent with the direction of Condition 2. Among other criteria, the Commission must consider whether work done pursuant to this limited local approval is sufficient to provide the basis for acknowledging this claim of a vested right.

The County Board of Supervisors approved Tract 1873 on September 1, 1998. Their action was appealed to the Coastal Commission by Commissioners Wan and Reilly, US Fish and Wildlife Service, California Department of Parks and Recreation, California Department of Fish and Game, California Native Plant Society, John Chestnut and Randall Knight. The Commission took jurisdiction over the project on January 13, 1999 when it determined that the County's action presented a number of issues regarding

consistency with the certified LCP. The de novo hearing on the appeal is scheduled to follow the hearing on this Vested Right Claim at the April 2000 Commission meeting.

4. Claimant's Contentions

Mr. Pratt offers a number of reasons in support of his contention that the Commission should acknowledge a vested right claim for Unit II of Tract 308 or, in the alternative for Tract 1873. These reasons are summarized from the claim as follows:

1. "The Court of Appeal's decision in South Central Coast Regional Com. V. Charles A. Pratt Construction Company (1982) 128 Cal. App. 3d 830 is applicable to both Unit I and Unit II of Tract 308. "

2. The appellate court decision in Pratt holds that the "Commission is committed to granting a permit to complete the subdivision (either Tract 308, Unit II or Tract 1873) provided it comports with the land density requirements of the Coastal Act."

3. In reliance on valid local approvals, the claimant incurred substantial liabilities prior to January 1, 1977 by expending money on rough grading, tree removal and clearing on Unit II of Tract 308. Additional funds were expended on utilities for Tract 308 Unit I, 306, 307 and 310 to serve Unit II.

4. Local approvals for Tract 308, Unit II are still valid and thus Claimants vested right to complete Tract 308 has not lapsed.

5. Contrary to the holding in the 1982 Pratt case, current vested right law acknowledges that possession of a Tentative Map is sufficient authority to give the claimant a vested right to complete the subdivision.

In summary, the claimants basic argument is that Unit II should be exempt from the Coastal Development Permit requirement because it was part of the 1982 Pratt case wherein the Court purportedly committed the Commission to approving a subdivision of the site if the density was appropriate. The Claimant also contends that Unit II is eligible for exemption because substantial work was done on the project (both on site and on near by sites) prior to the effective date of the Coastal Act. Each of the claims outlined above are discussed in the following sections of these Findings.

Claimant's Contention: The 1982 Pratt Case applies to Unit II of Tract 308 as well as to Unit I.

A detailed account of the history of the Vested Right Claim that gave rise to the Pratt Case is found on pages 8 and 9 of these Findings. As discussed in the history, a review of the Commission and Court Records for his case provide absolutely no evidence that the Vested Right Claim made in 1977 for Unit I extended to Unit II of Tract 308. The only evidence the claimant offers to support his assertion that Unit II was part of the Vested Right Claim in the Pratt case is that the Court of Appeal's decision references Tract 308 without differentiating the two units. This evidence is unpersuasive because the applicant never stated that both units of Tract 308 were being claimed. In his application to the Commission for the Vested Right Claim in 1977, the project claimed for exemption is identified as '*recordation of final map and completing off site improvements for Tract 308 of Cabrillo Estates for 86 single family homes'.* Exhibits attached to the application show only the 25 acre parcel bisected by Rodman Drive coinciding with the area of Unit I. No mention is made of the 81 acre Unit II site and it is not shown on the maps submitted with the claim nor was Unit II added at any time during the protracted Commission and Court Hearings on the 1977 claim. Therefore, if the Court did not differentiate between Unit I and Unit II it was because the case before the Court was for one subdivision on 26 acres and the Court was unaware that Tract 308 comprised two units based on information supplied by the applicant. Finally, it is worth reiterating that the project description (86 lots, 25 acre site) remained constant throughout all proceedings. If a mistake was made, and the applicant intended to include Unit II, there was ample opportunity to correct the record. The assertion that Unit II was part of the 1982 Pratt case is not supported by evidence in the record and thus a claim of vested right should not be acknowledged based upon this contention.

The Claimant further asserts that unspecified improvements made to Unit I also will serve Unit II inferring that some of the cost of these improvements should be attributed to Unit II for the purposes of this claim. The Commission is not persuaded by this assertion because the record for the 1977 VRC shows that the Claimant stated that that all of the money spent on subdivision improvements was for work done to complete the infrastructure for Unit I pursuant to the County approved "improvement plan" for Unit I. No mention was made by the Claimant that a portion of the work, and consequently, a portion of the money spent, was for a different project (Unit II). The Commission also notes that Unit I and Unit II do not share any common infrastructure that would be constructed as part of either tract. (Please see Exhibit 1, location maps and site plans)

Claimant's Contention : The 1982 Pratt Decision commits the Commission to approving the subdivision of Tract 308 and Tract 1873

The Claimant asserts that the following dicta found in the Appellate Court ruling on the 1982 Pratt case requires the Commission to approve the subdivision of Tract 308, Unit I and Unit II .

> *" As we have explained, the California Coastal Act reflects an important public policy to protect the coastal environment on behalf of the people of our state and our nation. The granting of a total exemption to the developers in this case would frustrate that policy to a significant degree. (See Avco Community Developers Inc. v. South Coast Regional Com. Supra 17 Cal.3d 785, 797-798)*
>
> *Neither subdivider has shown it will suffer irreparable detriment if it is required to obtain a coastal permit. Because Pratt was allowed to complete the off site improvements, the Commission is committed to complete the subdivision provided it comports with the land density requirements of the coastal act. "*

A thorough reading of the entire Pratt case results in a rather different interpretation of these remarks by the Court than that urged by the claimant. The Pratt Court clearly understood the broad mandate of the Coastal Act to protect coastal resources because the decision states

> " *The Coastal Act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone* ***and to ensure that any development within the zone will be consistent with this overall objective."*** *(*Infra, 844*,*emphasis added*)*.

If the Court understood that the Coastal Act provided a comprehensive body of policies to protect *all* of the natural and scenic resources of the Coastal Zone, why then, in the final paragraphs of the decision did the Court suggest that the Commission was committed to approve the Pratt subdivision if it was consistent with only the policy of the Coastal Act relating to "land use densities". The answer to this question may be found on page 838 of the case wherein the Court notes that the Regional Commission had denied a Coastal Development Permit for the subdivision because *" the proposed project was inconsistent with Section 30250 (a) of the Coastal Act."* Thus the Court may have assumed that the proposed density was, (and in order to provide support for the Claimant' assertion, would forever remain) the only aspect of the project that was an issue regarding consistency with Chapter 3 of the Coastal Act. There is no support in the opinion for the proposition that the Court intended to exempt the project from compliance with all other applicable resource protection policies found in Chapter 3 that provide the standard of review for all other projects proposed in the Coastal Zone. (PRC Section 30604 (a)).

This issue of a special Commission "commitment" to approve this subdivision has been brought up before by the Claimant in the context of his application for Tract 1342. The Commission considered this assertion in the adopted Findings for both CDP 4-87-337 and 4-86-48 which state the Commission's position on this contention as follows:

> *"The applicant filed suit (Charles A. Pratt Construction Company, Inc. v. California Coastal Commission) seeking an exemption from the requirement for a coastal development permit and for a grant of time extension for the tentative map based upon the vested rights of his improvements. The applicant challenged only the denial of the claim of exemption. The trial court ruled in favor of the owner. The Commission appealed the decision and the appellate court ruled that the project was not exempt from the Coastal Commission jurisdiction. The court also stated that "because Pratt was granted a permit to complete the offsite improvements, the Commission is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act."*
>
> *Within the discussion section of the opinion, the court notes that "the 1976 Coastal Act . . .represents a major statement of overriding public policy regarding the need to preserve the state's coastal resources not only on behalf of the people of our state, but on behalf of the people of our nation." The discussion further indicates that Section 30001 sets forth the legislative findings and declarations for the Coastal Act as "(a) that the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."*
>
> *The Court's opinion speaks of the overriding policies of the Coastal Act in reviewing project developments within the coastal zone and concluded that the proposed development must be found consistent with these policies, hence its finding that the Commission "is committed to granting a permit to complete the subdivision provided it comports with the land density requirements of the Coastal Act."*

> *The Commission interprets the language of the court's decision as containing an assumption that upon resubmittal of the permit application, all surrounding circumstances will be as they were at the time of the issuance of the opinion. However, language throughout the opinion stressed the overriding need to preserve the state's coastal resources.* ***This leads to the conclusion that any significant change in such circumstances could justify a change in the Commission response to a resubmitted application."*** *(* excerpt from CDP 4-87-337, emphasis added)

Finally, even if it could be reasonably argued that the Pratt Court carved out a special exemption from the application of most Coastal Act policies to the subdivision that was the subject of that case, this exemption would only apply to Commission consideration of a *Coastal Permit Application* for Tract 308, Unit I. Here, the Claimant is asking the Commission to acknowledge a *Vested Right Claim* for different projects (Unit II of Tract 308 or, Tract 1873). There is no explanation to support this creative bootstrapping from project to the other and from one procedure to another.

In conclusion, the Commission is not "committed" to approve a Vested Right Claim for either Tract 308, Unit II or the newer Tract 1873 based on the paragraph cited by the Claimant from the Pratt Case. It has, on two occasions specifically addressed the issue presented by the Pratt Court's statement regarding a commitment in a manner that does not agree with the interpretation placed on this statement by the Claimant. The Commission's interpretation was not challenged by the Claimant in 1986 or 1988 and remains unaltered in these Findings.

Claimant's Contention: The Claimant incurred substantial liabilities prior to January 1, 1977 for work done on the project pursuant to valid local approvals.

In order to acknowledge a claim of Vested Rights, the Commission must determine that the Claimant incurred " substantial liabilities" in undertaking work on the project pursuant to valid local approvals. Mr. Pratt claims that, in reliance on valid county approvals, he spent a substantial amount of money for grading work done on the site. According to estimates included in the Claimant's submittal for total cost of project and cost of work done before January 1, 1977, he had expended over 35% of the total project cost by that date. The Claimant has also submitted a number of plans showing a variety of improvements made for Tracts 306,307, and 310. The Maps submitted by the Claimant for these Tracts, show that the owner was a Mr. Rodman, not Mr. Pratt and

were approved and constructed before Tract 308, Unit II received local approval. Inexplicably, these *existing* improvements are also included on the Claimant's list of improvements needed to be constructed to complete Tract 308.. The Claimant is contending that 52% of the money spent on these improvements (estimated by the Claimant's engineer at $95,000) should also be counted towards the claim for Tract 308, Unit II because they may be used by people living in Tract 308 if it was ever constructed (i.e. residents of Tract 308 would use the road system of Tracts 306 and 307 to gain access to their property, drainage from Tract 308, because it is at a higher elevation would flow thru Tracts 306, 307 and 310"s storm drains etc). Under this theory, a portion of the cost of *any* earlier infrastructure (Los Osos Blvd., Highway 101 etc) that would serve a development for which a vested right was being sought could be attributed to that project as part of the vested right determination. This effort to draw upon long completed improvements for nearby, but separate developments, to support the claim for Tract 308, Unit II is creative but inconsistent with the legal standard for reviewing vested right claims.

As discussed in an earlier section of these Findings, a review of the record for the 1977 Vested Right Claim for Tract 308, Unit I does not reveal that any of the expenditures claimed for that project would also serve Unit II. It is also not appropriate to consider a portion of the money spent by another developer on improvements to earlier, nearby subdivisions.

Regarding funds expended pursuant to the preliminary grading plan, the only local approval the applicant had obtained prior to 1977, the Commission disagrees with the assertion that the Claimant has incurred a " substantial liability". The following paragraphs describe the legitimate costs that can be considered in this vested right determination and provide a detailed analysis of the Claimants contentions in this regard.

According to established law regarding the determination of vested rights for a project, the courts have held that the only those funds that can be considered are those spent directly on physically developing the project and pursuant to valid local approvals. The Courts have also held that the work must be done in " good faith" and "without unseemly haste "(Tosh v. California Coastal Commission, infra and Avco Community Developers Inc. v. South Coast Regional Commission, infra,) This means that the costs associated with *obtaining* local approvals (land acquisition, design work, EIR's, Permit Fees, Legal, Planning and Engineering costs, etc.) cannot be counted. Examples of *allowable* costs would be grading done pursuant to a valid grading permit, foundations poured pursuant to a building permit, septic systems installed under a permit from the Health Department and the like. The money expended on the pre January 1, 1977 work must also be " substantial " in relation to the total cost of completing the project. While the Courts have not identified a specific percentage of work that constitutes " substantiality", in the Pratt

Case (infra), the Court agreed with the Commission that the Claimant was entitled to a vested right to complete the subdivision improvements for Unit I of Tract 308 because 22% of the work was already complete. With these ground rules in mind, the following analysis concludes that the Claimant has not incurred " substantial liabilities" because of the minimal work done prior to January 1, 1977 given the total coast of project completion.

Work Needed to Complete the Project

The claimant, Mr. Pratt, has submitted a Vested Right Claim Application for Tract 308, Unit II, 152 lot subdivision of a 81 acre parcel in the Los Osos area of San Luis Obispo County. The application proposes that the Commission exempt the recordation of the Final Map for Tract 308, Unit II and the completion of all subdivision improvements as follows:

d. Continuation of utilities from existing stubs.

e. Construction and continuation of street paving, curbs and gutters

f. Completion of storm drain system per plan

(from Claimant's submittal, Expanded Answer to 9, Claimant's Exhibit 8 M)

The Claimant may be underestimating the amount of work still to be accomplished on this site. Based on information found in County Records, a review of proposed improvement plans and a recent inspection of the site, it appears that no significant work has been done and all of the subdivision improvements (installation of all utilities, drainage and erosion provisions and all paving of roads) remain to be accomplished. It also appears that the limited grading and clearing done in 1976 is now completely overgrown and the visible graded areas are no more than paths at this point. The widest graded "road" is perhaps 10' with most only a few feet wide. It is obvious from the site inspection that the grading done in 1976 to allow for a proper survey must be augmented and re-done before any paving or other finish work could be undertaken. The cost of this new grading must thus also be added to the estimate for completion of work.

Work Completed and Money Spent Prior to January 1, 1977

The Claimant has not submitted receipts to document his assertion that he spent substanial money on the project in 1976, instead he has submitted several statements

and declarations describing the work performed on the site prior to January 1, 1977. The statements describe the Declarants present recollection of the costs of that work performed over twenty two years ago. All of this information relates only to the Claim of Vested Right for Tract 308, Unit II.(No information has been submitted regarding expenditures for Tract 1873 prior to 1977 because the Claimant's theory for why a Vested Right should be acknowledged for that Tract rests on a different legal theory.)

This material for Tract 308, Unit II is summarized below.

Claimants Submittal, Volume 2, 5H ,Answer to Question 8 . Here the Claimant states that 60% of 7,400 lineal feet (4400' is 60% of this figure) of a 50' wide road was rough graded and 100% of the clearing and grubbing needed for locating the roads was accomplished prior to January 1, 1977.

Declaration of Randy Houg, Volume 2, 5H : Mr. Houg apparently worked on the surveying crew for laying out the roads for the project. In his declaration, he states that the " roads were cleared by bulldozer " and that this work was done in " the latter part of 1976 ". (Houg Declaration, June 16, 1999)

Declaration of Jack Foster, June 22 1999, Volume 2, 5H : Mr. Foster does not state when the work was done but does describe working, with a crew, on the site for approximately three weeks. During that time he states that he and his crew were "doing work on an hourly rental basis for the purposes of taking out eucalyptus trees, brush, and clearing to facilitate access by surveyors. Based upon my experience and general recollections, we would have used a D-6c Dozer, D-8h Dozer and 977L Track loader for this clearing work for proposed streets in Unit II of Tract 308 ". Regarding the cost of this work, he states that " it is my opinion that the minimum amount billed for this work in clearing the proposed streets for the upper Unit of Tract 308 would have been **$26, 400**. " (all figures in this portion of the Findings are in 1976 dollars, to convert to 1999 dollars the figures should be multiplied by 3.5)

Declaration of Charles Pratt, June 11, 1999, Volume 2, 5H : Mr. Pratt declares that clearing and grubbing of the proposed streets was done " between October 1976 and before Christmas 1976 ". It is his recollection, this work took " approximately one month". He also states that " After the proposed streets in the upper portion of Tract 308 had been cleared and grubbed, we next graded the proposed alignments for the streets in the upper portion of Tract 308. This work was completed prior to the end of 1976. This substantial work involved the cutting of existing ground to proposed grades and filling other areas to proposed grades. This cutting and filling and compacting all occurred within the proposed right of ways for the streets which are approximately 50' wide . This work involved approximately 7000 linear feet for the proposed future streets. Prior to January 1, 1976, a minimum of 80% of the work necessary to complete the

rough grading for the proposed streets was completed." During the fall of 1976, Mr. Pratt states that " I supervised the excavation and grading of the storm retention basin for Tract 308……the excavation work for this basin was completed during the fall of 1976. "
Mr. Pratt states that the total funds expended for grading and clearing for the roads and the detention basin was **$154,000** ($100,000 for rough grading of roads, $26,000 for clearing and grubbing, $18,000 for excavation of settlement basin and $10,000 for drainage improvements to Tract 308, Unit I that also serve Unit II).

Declaration of Ben Maddalena, June 10 1999, Volume 2, 5H : Mr.. Maddalena states that the site was cleared and grubbed by Jack Foster in the fall of 1976 and approximately 80% of the proposed street alignments were rough graded prior to January 1, 1976. He states that the cost of this work totals **$117,635** ($20,635 for design, clearing and surveying, $97,000 for rough grading of the roads).

Applicant's Submittal, Volume 2,8M : In the Claimant's expanded to question 8 on the Vested Rights Claim form, Mr. Pratt provides a breakdown of pre 1977 expenditures on the project. (Please see Exhibit12) Many of the expenditures are not for physical work on the site pursuant to the county approval for preliminary grading. As noted in an earlier section of these Findings, Courts have held that Vested Right Claims are not supported by expenditures not directly made for work on the site such as legal and engineering fees, taxes, land acquisition costs, and interest (presumably on the loan to buy the property) or for work that was not authorized by a valid local permit. Subtracting these types of costs, the breakdown shows that $97,300 was paid out for " Grading, tree removal and storm drain " and another $8,111 was expended for " Administration and supervision" for a total of **$105,411.**

Based on the foregoing declarations and statements in the submittal, it appears that somewhere between $105,000 and $154,000 is claimed to have been spent by the applicant on work pursuant to a valid local approval prior to January 1, 1977. Staff notes that ordinarily expenditures in support of a vested right claim include objective documentation such as cancelled checks, invoices and the like unless these would be impossible to provide. The Claimant has been asked to provide this type of documentation and has provided such information for certain legal and design costs but has not furnished this type of documentation for actual site work (grading, clearing) accomplished pursuant to the preliminary grading permit. Thus, while Declarations may be appropriate as supplementary information, in this case, they constitute the only documentation regarding expenditures. The Commission may therefore accord these figures the credence it believes they are entitled to recognizing that according to ariel photographs taken in early 1977, it is clear that rough grading of the roads had been accomplished by that time. Based on the recent site visit, it does not appear that the roads were ever graded to a 50' width however. Staff also notes that the Claimant

states that 25,000 cubic yards of grading was performed at a cost of $$100,000 or $4.00 per cubic yard (Declaration of Charles Pratt). Information obtained by staff from a representative of Granite Construction Company indicates that the standard price for grading in Central California in 1976 was $1.00 to $1.50 a cubic yard or $25,000 to $37,500 to grade 25,000 cubic yards.

If the figures given by the Declarents and in the statement included as 8M of the Claimants submittal are assumed to be accurate, the following adjustments must be made to them to comply with the requirement that only work done pursuant to a valid local approval may be counted. The only local approval the Claimant had authorizing any work on Tract 308, Unit II in the fall of 1976 was the preliminary grading plan for the roads signed off by the county in August of 1976. A review of these plans show that they are for road *grading* only. No other work is shown on the plans (no drainage improvements, no settlement basin, etc.) It can therefore be concluded that the *only* work authorized by these plans was grading to essentially accommodate a proper survey for the proposed subdivision roads in order to prepare the final " Improvement Plan" as envisioned by Condition 2 of the 1973 approval. Thus, only the sums expended on road grading can be used in this determination and Mr. Pratt's estimate of pre-1977 expenditures must be reduced by $28,000 to $126,000 (subtracting the unauthorized work on the drainage and settlement basin). Averaging the three estimates (Pratt, Maddelena and Statement at 8M) which seem to account for all the permissible work on the site before 1977, it appears that a working figure of **$117,000** is appropriate for continuing the analysis**.** The Commission may also consider the lower figure of **$57,000**[2] if it finds the cost per cubic yard figures supplied by Granite Construction more persuasive. The next step is to determine whether this sum represents a " substantial liability" in terms of the overall cost to complete the project.

Cost to Complete the Project

In order to obtain a Vested Right to complete the subdivision improvements for Tract 308, Unit II, the Claimant must demonstrate that he incurred *substantial* liabilities for work done in reliance on a valid approval. The method of determining if substantial work has been done is to compare the cost of the pre-1977 work with the cost to complete the work after 1977. In general, if much of the work has been done and little remains, a Vested Right Claim will be upheld. Conversely, if only a small amount of work was accomplished and most remains to be finished, then a claim will not be sustained. Although there are no set percentages to provide objective guidance, the claim for the completion of subdivision improvements for Unit I of Tract 308, a smaller project, was sustained by a showing that 22% of the improvements were completed.

[2] 25,000 cubic yards of grading at$1,25 per cubic yard (the average of the range of $1.00 to $1.50 quoted by Granite) =$31,250 plus $26,000 (estimate from Declaration of Jack Foster) for a total of $57,000.

Three factors however, complicate an analysis of this claim and distinguish it from others. One factor that the Commission must consider is the long period of time, over 24 years, that has passed since the pre Coastal Act work was done on this site. This long gap affects the calculation of the ratio of the cost of the pre 1977 work to the cost in 1999 of completing the subdivision improvements. The Claimant suggests that either the 1999 costs to complete be converted into 1976 dollars or that the 1976 expenditures be converted into 1999 dollars. The law, perhaps contemplating that a vested right claim would be made in a more timely fashion, simply requires a comparison of the costs paid out before the project came under the jurisdiction and what it would cost to complete the project at the time the claim is submitted for a determination. To avoid a series of potentially confusing computations the analysis of this issue is made using 1976 dollars for 1976 expenses and current dollars for current estimates to complete work. Exhibit 8 provides mathematical alternatives as proposed by the Claimant to this method of computation

Another factor the Commission must consider in this case is whether the Claimant *can* complete the subdivision improvements for Tract 308 at this late date. This issue is discussed in a subsequent section of these Findings but concludes that the Claimant does not now, and never did have the local approvals required to finish the project and meet the conditions attached to the Tentative Map as necessary to record a Final Map for Tract 308, Unit II. The following discussion therefore focuses on the ratio of pre Coastal Act expenditures vs. Post Coastal Act costs to finish the improvements.

Finally, the Commission must consider the amount and type of work done in 1976. In 1976, the Claimant had obtained only a preliminary grading permit to allow him to properly survey the site in order to prepare the final grading plan which would be used, after county approval, to lay out the final alignment of the roads for the subdivision. The preliminary grading permit did not authorize much, if any, substantial work towards physically constructing the subdivision infrastructure. The limited grading that was accomplished may or may not have ultimately been useful to the final grading of the subdivision roads but, as the County conditions for the Tentative Map stated, the road configuration was subject to change and the final “Improvement Plan” that would have truly sited the roads was never submitted to the County. It thus remains unknown how much of this 1976 work would have remained as part of the completed project. In any event, it is clear that most of this 1976 work must be re-done and significantly augmented before any final grading, paving and utility installation can be undertaken on this site.

The Claimant states that he has expended $117,000 on work prior to 1977. He estimates that he will spend an additional $759,000 to complete the project. (Claimants submittal, 8M, expanded answer to question 10 of the Vested Right Claim form). There

is no breakdown of the cost of the individual improvements that remain to be constructed, however, the figure given seems very low based on staff's experience with construction and paving costs in California. A separate estimate for the work remaining to be accomplished has been prepared by the Commission's Civil Engineer based on information from San Luis Obispo County, Granite Construction and recent projects in the Coastal Zone. (Please see Exhibit 9) This estimate , which does not include all of the work to complete the subdivision because of the difficulty in obtaining some of the information is therefore low but indicates that a more reasonable figure for completion of the site work would be **$2,500,000**. The Commission finds that this figure is the appropriate one to use in calculating the ratio of pre 1977 expenditures to post 1977 completion costs. Based on the actual dollars spent and to be spent only 5% or 3%, based on the lower Granite figures for grading in 1976, of the work was completed prior to 1977. The Commission notes that even if the Claimants formula for identifying the ratio between money spent to date and the work done compared with what remains to be spent and done was used, the 1976 expenditures and work remain insignificant in light of what is needed to complete the project.

In conclusion and based on all reasonable evidence, it does not appear that the Claimant has adequately demonstrated that he has incurred substantial liabilities because of the work performed on Tract 308, Unit II in 1976. The amount of money the Claimant contends was spent is not supported by independent verification and would in any event only represent 5% of the reasonable cost to finish the improvements. The Claimant has also apparently not been financially damaged by the 1976 expenditures because he abandoned work on Tract 308, Unit II for almost a quarter of a century in favor of pursuing alternative development on the site for which most of the proposed improvements to Tract 308, Unit II would be inconsistent. (Tract 1342 and, later Tract 1873)

Claimant's Contention: The Local Approvals for Tract 308 are still valid and thus Claimants Vested Right to Complete the Project has not lapsed

In addition to demonstrating that "substantial liabilities" have been incurred, the successful Claimant for a vested right must also show that they have the valid local approvals needed to complete the project. In this case, the Claimant is requesting a vested right to allow for the completion of subdivision improvements and the filing of the Final Map for Tract 308, Unit II. To properly analyze this request, it must be determined what local approvals are required for the physical work needed to complete the project, what approvals are required to satisfy all of the conditions of the Tentative Map and the status of these approvals. These items are discussed separately in the following paragraphs.

THE TENTATIVE MAP FOR TRACT 308, UNIT II : The Tentative Map for Tract 308, Unit II expired 22 years ago and because it expired, any Vested Right Claim based on that approval has also expired. This map was conceptually approved by the Board of Supervisors of San Luis Obispo County in May 1973. Under the terms of the Subdivision Map Act, Tentative Maps are valid for two years from the date of approval. Tract 308, Units I and II was thus valid until May 1975. On October 1, 1974, the Board of Supervisors extended the life of Tract 308 until November 1, 1976. On September 28, 1976 the map was again extended for an additional eighteen months (until March 28, 1978).There is no record of any more extensions for Tract 308, Unit II after the September 1976 extension. There is no record that the Claimant satisfied any of the conditions attached to the Tentative Map before it expired. The Tentative Map for Tract 308, Unit II thus expired on March 28, 1978.

The Claimant's argument regarding the continued validity of the Tentative Map for Tract 308, Unit II is unpersuasive. His argument is basically a contention that the original map for Unit II is still valid because it evolved into Tract 1342 that then became part of Tract 1873, a Tentative Map that is valid as of this date. Even if it could be reasonably argued that because the *descendent* of a valid map was valid, so was an earlier version, the map for Unit II was not valid at the time Tract 1342 was approved. As discussed earlier, Tract 1342 was approved on January 26, 1986. The Tentative Map for Unit II expired on March 28, 1978 and the Tentative Map for Unit I expired in May of 1985. Therefore, neither map was valid at the time Tract 1342 was approved.

IMPROVEMENT PLAN FOR THE SUBDIVISION; In order to file the Final Map for Tract 308, Unit II, the subdivider was required to complete the subdivision improvements as conditioned in the county approval of the Tentative Map. These improvements included road grading and paving to county standards, installation of all utilities (water, electrical, gas, cable), drainage facilities, erosion control devices and individual driveways. In San Luis Obispo County, an approved " Improvement Plan" is the local approval that authorizes this work. There is no record at the county that the Claimant ever applied for, or received, this permit.

OTHER NECESSARY LOCAL APPROVALS: The Tentative Map approved for Tract 308 also included a number of other conditions that had to be satisfied before the Final Map could be recorded. Many of these conditions, as discussed below, required the submission of various plans and other documents for County review and approval. Based on the information in the Claimant's submittal and the County file for Tract 308, none of these other approvals were secured.

1. Tentative Map Approval: Condition 1 This Condition, read in conjunction with the preceding county staff note, requires a revised subdivision map reflecting the BV zoning requirements and showing an "additional 8 acres of open space or the

elimination of lots in the steep part of the tract" (Unit II is the steep part of the tract). There is no evidence in the file that this revised map was ever prepared or approved by the County

2. Tentative Map Approval : Condition 2, This is the condition discussed above that requires the submittal of an " Improvement Plan" to the Planning Department for review and approval. The plan was never submitted and thus never approved.

3. Tentative Map Approval: Condition 3, This condition requires the submittal of a drainage plan for the review and approval of the County Engineer. The plan is to include " a complete drainage plan with all hydraulic design computation…..all easements required for drainage purposes….off site drainage facilities and meet the requirements of Zone 5-A Flood Control District." There is no record in the file of an approved drainage plan.

4. Tentative Map Approval: Condition 4, This condition requires the applicant to " submit complete plans for the proposed water system, prepared by a registered Civil Engineer " and "evidence of a potable water source satisfactory in quantity and quality " to the County Engineer for review and approval. The condition also requires that "Fire protection must be provided in a way as to meet county standards". There is no evidence in the file of an approved water system in compliance with the terms of this condition.

5. Tentative Map Approval: Condition 5, This condition requires the applicant to submit " complete plans for the proposed sewer system…..required sewer easements….." to the County Engineer for review and approval and " a report of waste discharge " to the Water Quality Control Board to set discharge limits. There is no evidence that this condition was satisfied.

6. Tentative Map Approval: Condition 6, This condition requires that " all utilities must be shown on the improvement plans and will be subject to the approval of the County Engineer" and "All utility easements required by the utility companies…. ". There is no record in the County files or in the Claimants submittal that these improvement plans were approved by the County Engineer.

7. Tentative Map Approval: Condition 7, This condition requires a final grading plan and cut and fill slope easements to be submitted to the County Engineer for review and approval. There is no record of an approved final grading plan in the County files or in the Claimants submittal.

8 Tentative Map Approval: Conditions 8 and 9, Both of these conditions are related to the "Improvement Plan " for the construction of the infrastructure for the subdivision. As already, discussed, this "Improvement Plan" was never approved by the County.

9 Tentative Map Approval: Condition 10, This condition requires the designation of open space lots and legal documents relevant to the establishment of the homeowner's association charged with the maintenance of the open space areas. There is no evidence of compliance with this condition in the County files or the Claimants submittal.

10 Tentative Map Approval: Condition 11, This condition requires the applicant , after consultation with the California State Department of Parks and Recreation, The State Divisio0n of Forestry and the South Bay Fire District to prepare a fire protection plan for the review and approval of the Planning Department. There is no evidence in the County's files or the Claimant's submittal of an approved fire protection plan for the subdivision.

11 Tentative Map Approval: Condition 12, This condition required the submittal of revised street names for Planning Department review and approval. There is no record of compliance with this condition.

12 Tentative Map Approval: Condition 14, This condition required that the applicant " submit building heights for each lot" to the Planning Department for review and approval. There is no evidence in the County's files or in the material submitted by the Claimant to indicate compliance with this condition.

There is therefore no evidence to support the Claimant's contention that the local approvals needed to complete the improvements for Tract 308, Unit II are still valid or were indeed ever obtained. The Tentative Map for Tract 308, Unit II expired over 22 years ago, the one local approval that was issued (the preliminary grading permit) was exercised and the other approvals required by the conditions attached to the Tentative Map were never secured. It is therefore unreasonable, in the face of these facts, to assert that the Claimant has any valid authority to complete this long expired project.

Claimant's Contention: Current Vested Right Law Provides that a Tentative Map is Adequate Authority to Grant a Vested Right Claim

The Claimant speculates that under the Supreme Court holding in the Santa Monica Pines, Ltd. V. Rent Control Board case (35 C. 3d 858, 1984) , he would be entitled to a vested right because he obtained approval of the Tentative Map for Tract 308 prior to

the effective date of the Commission's jurisdiction over his project. A review of the Santa Monica Pines case reveals that the holding of the Court does not merely state that the possession of a Tentative Map is sufficient to ensure a successful vested right claim. Rather, the decision supports the Commission's Findings because in Santa Monica Pines, the Court affirmed the decisions of both the Trial and Appellate Courts in holding that *even though* the Claimant had obtained a Tentative Map (and that was the only permit needed) for the conversion of apartments to condominiums prior to the effective date of a local ordinance regulating condominium conversions, the developer was not entitled to a vested right to complete the conversion because

> *" the amount of money actually spent by appellants in reliance on the Tentative Map approval - only about $1,700 was expended between the date the map was approved and the date the rent control law was adopted – was inadequate tp predicate a vested right to complete the conversion free of rent control."* (infra 860)

The Court thus affirmed the long line of vested right cases that require not only some form of local approval for a project but *also* that the developer incurred substantial liabilities in reliance on that approval. That test was not met in Santa Monica Pines and it is not met in this case.

The Commission also notes that the Claimant has supplied staff with extensive legal authority detailing why he believes that the Commission should uphold his Vested Right Claim. All of this authority either actually supports the staff's position or is not applicable to the question of vested rights in this situation. The authority cited by the Claimant that *does* apply, supports staff's assertion that in order to sustain the Vested Right Claim, the Claimant must prove that he had all necessary governmental approvals as of January 1, 1977, and that he had performed substantial work or incurred substantial liabilities in good faith reliance upon those governmental authorizations. In addition, in this case, the Claimant must also prove that he filed the Final Subdvision Map within the valid life of the Tentative Map (McPherson v. City of Manhattan Beach, (2000) 78 Cal. App4th, 1252,1257) In this case over twenty two years have gone by without filing the Final Map, and as discussed at length elsewhere in these Findings, the Tentative Map has long expired thus making it impossible to ever file the Final Map. Because the Claimant never filed the Final Map is reason, by itself, for the Commission to reject this claim.

5. Conclusions Regarding the Claims

A. Claim Number One , VRC for completion of all subdivision improvements for Tract 308, Unit II : In order to sustain this claim, the Commission must find that

1) **substantial work was done on the site pursuant to valid local approvals before January 1, 1977** and

2) **the Claimant currently has the valid local approvals needed to finish up the work.**

The Claim fails because neither of these criteria are met in this case. As discussed in these Findings,

1) **The Claimant has not shown that substantial work was performed on site, pursuant to valid approvals, prior to January 1, 1977. The work that was done is insignificant in view of the cost to complete the project**. Virtually *all* of the work needed to construct the subdivision improvements remains to be done. The small amount of grading and clearing done in the fall of 1976 to allow for an accurate survey is almost completely overgrown and, based on a recent site inspection, was never done to the standard that would have allowed paving or the installation of utilities. It is thus obvious that a substantial amount of additional grading would have to be done before the Claimant would be able to make the improvements he has listed as items to be constructed. The amount of money spent doing the preliminary grading in 1976 ($117,000 based on the Claimants recollections or a significantly lesser sum ($57,000) based on general grading costs in Central California at the time) is insignificant in relation to the amount of money it would take to construct the subdivision improvements consistent with the conditions attached to the Tentative Map. The Commission notes that the cost to mostly complete this project would, as a conservative estimate be almost $2,500,000. The Claim is therefore not acknowledged because the amount of work done pursuant to the locally approved preliminary grading plan and the liabilities incurred were not substantial in view of the total cost of the project.

2) **The Claimant has not shown that he has currently valid approvals needed to finish the work** . The Claimant does not have *any* of the local approvals required to finish work on this site. In order to undertake finish grading, road paving, installation of utilities and drainage and erosion control facilities, the Claimant would have to have a valid County permit for an “Improvement Plan”. The Claimant does not have such a permit and, based on a review of the County records, has never applied for this permit.

B. Claim Number Two : Recordation of the Final Map for Tract 308, Unit II : In order to sustain this claim, the Commission must find that :

.**All of the conditions attached to the Tentative Map have been met and that the Tentative Map is still valid.**

The Tentative Map expired on March 28, 1978 and, as of that date, *none* of the conditions attached to approval of the Tentative Map had been satisfied. The Claim of exemption cannot therefore be acknowledged, because the critical requirements have not been met. The Commission is un-persuaded by the Claimant's contention that the Tentative Map for Tract 308, Unit II remains valid because subsequent tracts have been approved on this and neighboring sites after Tract 308, Unit II expired. (Tracts 1342 and 1873).

C.Claim Number Three, Construction of all Subdivision Improvements for Tract 1873 and Recordation of the Final Map for Tract 1873 : In order to acknowledge this claim, the Commission would have to find that :

1. **substantial work, pursuant to valid local approvals, was done on the site prior to January 1, 1977** and

2. **the conditions attached to the Final map had been satisfied prior to that date.**

Tract 1873 was not approved by San Luis Obispo County until 1997, twenty years after the site came under the jurisdiction of the Coastal Act. **The conditions attached to the local approval of the Tentative Map have not been satisfied and final approval of the subdivision has not yet been obtained because the project is currently on appeal to the Coastal Commission.** The Commission cannot, therefore make the Finding that work was done on the project prior to January 1, 1977. The Commission is also un-persuaded by the Claimant's arguments that *if* Tract 308, Unit II is entitled to a Vested Right, so is Tract 1873 because it is one of the successors to Tract 308. Likewise the Claimant's argument fails regarding his assertion that the Commission is " committed" to approve the current proposal for Tract 1873 because of statements in the Pratt case. Finally, Tract 1873 is a different project than Tract 308, Unit II. It is based on a larger site and a different lot and road lay out. Even if Tract 308, Unit II qualified for a Vested Right exemption, Tract 1873 would not. The controlling statute , Public Resources Code Section 30608 , expressly states that

> **" *no substantial change may be made in any such development*** [exempted under this section] ***without prior approval having been obtained under this division "***

As discussed in detail in preceding sections of these Findings, there is no basis under any valid legal theory to sustain a Vested Right Claim for a subdivision

approved over twenty years *after* the effective date of Coastal Commission jurisdiction over the site.